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5 Ernst Mechanical Company, a California Company

6  
7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

10  
11 BOARD OF TRUSTEES, etc., et al,

12 Plaintiffs

13 vs.

14 KURT ALBIN ERNST etc.,

15 Defendant.  
16  
17  
18

C 008 – 0355 PJH

**DEFENDANT'S ANSWER TO  
COMPLAINT**  
(DEMAND FOR JURY TRIAL)

19 Comes now defendant Kurt Albin Ernst, individually and doing business as Ernst  
20 Mechanical Company, a California Company (herein "Ernst"), answering for himself alone  
21 the complaint of Plaintiffs Board of Trustees of the Laborers Health and Welfare Trust  
22 Fund for Northern California, Board of Trustees of the Laborers Vacation-Holiday Trust  
23 Fund for Northern California, Board of Trustees of the Laborers Pension Trust Fund for  
24 Northern California, and Board of Trustees of the Laborers Training and Retraining Trust  
25  
26

1 Fund for Northern California (herein collectively "Plaintiffs"), and admits, denies and avers  
2 as follows:

3 Ernst does not have sufficient information or belief to enable him to admit or deny  
4 any of the averments of the complaint hereinafter denied for want of information or belief,  
5 and Ernst denies each such averment of the complaint on that basis.  
6

7 **RESPONSE TO "JURISDICTION AND VENUE" AVERMENTS**

8 1. Responding to ¶1 thereof, Ernst admits that the complaint of Plaintiffs  
9 avers that this Court has subject matter jurisdiction under the provisions of 29 U.S.C.  
10 §185 (§301 of the Labor Management Relations Act of 1947 as amended) and 29 U.S.C.  
11 §§1132(a)(3) and 1132(e)(1) (§§502(a)(3) and 502(e)(1) of the Employee Retirement  
12 Income Security Act of 1974, as amended), and with that exception Ernst denies each  
13 and every averment therein.

14 2. Responding to ¶2 thereof, Ernst admits that the complaint of Plaintiffs avers  
15 that this Court is the proper venue for its claims, and with that exception Ernst denies  
16 each and every averment therein.  
17

18 **RESPONSE TO "PARTIES" AVERMENTS**

19 3. Ernst denies for want of information or belief each and every averment of  
20 ¶3 thereof.

21 4. Ernst denies for want of information or belief each and every averment of  
22 ¶4 thereof.

23 5. Ernst denies for want of information or belief each and every averment of  
24 ¶5 thereof.

25 6. Ernst denies for want of information or belief each and every averment of  
26 ¶6 thereof.

1           7.           Responding to ¶7 thereof, Ernst admits the averments set forth in the first  
2 sentence thereof, denies for want of information or belief each and every averment of the  
3 second sentence thereof, admits the averment within the third sentence thereof that Ernst  
4 in the sole proprietor of Ernst Mechanical and with that exception denies for want of  
5 information and belief each and every averment therein, and denies for want of  
6 information or belief each and every averment of the fourth sentence thereof.

7  
8                                   **ANSWER TO FIRST CLAIM FOR RELIEF**

9           8.           Ernst incorporates by this reference each and every averment of his ¶¶ 1-  
10 7, inclusive, as set forth above, as if set forth herein in full.

11           9.           Responding to ¶9 thereof, Ernst admits that he signed a written agreement  
12 with Plaintiffs, or some of them, and with this exception denies for want of information or  
13 belief each and every averment therein.

14           10.          Responding to ¶10 thereof, Ernst admits that he signed a written  
15 agreement with Plaintiffs, or some of them, and with this exception denies for want of  
16 information or belief each and every averment therein.

17           11.          Ernst denies for want of information or belief each and every averment of  
18 ¶11 thereof.

19           12.          Ernst denies for want of information or belief each and every averment of  
20 ¶12 thereof.

21           13.          Ernst denies each and every averment of ¶13 thereof.

22           14.          Ernst denies each and every averment of ¶14 thereof.

23           15.          Ernst denies each and every averment of ¶15 thereof.

**ANSWER TO SECOND CLAIM FOR RELIEF**

16. Responding to ¶16 thereof, Ernst incorporates by this reference each and every averment set forth in his ¶¶1-7, inclusive, and ¶¶9-15, inclusive, as set forth above, as if set forth in full herein.

17. Ernst denies for want of information or belief each and every averment of ¶17 thereof.

18. Ernst denies each and every averment of ¶18 thereof.

19. Ernst denies each and every averment of ¶19 thereof.

20. Ernst denies each and every averment of ¶20 thereof.

**ANSWER TO THIRD CLAIM FOR RELIEF**

21. Responding to ¶21 thereof, Ernst incorporates by this reference each and every averment set forth in his ¶¶1-7, inclusive, ¶¶9-15, inclusive, and ¶¶17-20, inclusive, as set forth above, as if set forth in full herein.

22. Ernst denies for want of information or belief each and every averment of ¶22 thereof.

23. Responding to ¶23 thereof, Ernst admits that he is the sole proprietor of Ernst Mechanical and that he has authority in connection with employee fringe benefit contributions, and with these exceptions denies each and every averment therein.

24. Ernst denies each and every averment of ¶24 thereof.

25. Ernst denies each and every averment of ¶25 thereof.

**ANSWER TO FOURTH CLAIM FOR RELIEF**

26. Responding to ¶26 thereof, Ernst incorporates by this reference each and every averment set forth in his ¶¶1-7, inclusive, ¶¶9-15, inclusive, ¶¶17-20, inclusive, and ¶¶22-25, inclusive, as set forth above, as if set forth in full herein.

1           27. Ernst denies for want of information or belief each and every averment of  
2 ¶27 thereof.

3           28. Ernst denies for want of information or belief each and every averment of  
4 ¶28 thereof.

5           29. Ernst denies each and every averment of ¶29 thereof.

6  
7                                   **AFFIRMATIVE DEFENSES**

8           30. The claims of Plaintiffs, and each of them, fail to aver facts sufficient to state  
9 a claim for relief against Ernst.

10           31. The claims of Plaintiffs, and each of them, are barred pursuant to the  
11 principals of res judicata, of collateral estoppel, and of accord and satisfaction, by reason  
12 of the complete compliance by Ernst with each and every one of the terms and conditions  
13 of each and every written agreement he has negotiated with Plaintiffs, or any of them.

14           32. The claims of Plaintiffs, and each of them, are barred pursuant to the  
15 principals of applicable provisions of statutes of limitation.

16  
17           WHEREFORE, defendant Ernst prays for relief as follows:

18           1. That judgment be entered in his favor;

19           2. That judgment be entered against Plaintiffs and each of them, and that they  
20 and each of them take nothing by reason of their complaint herein;

21           3. For costs of suit incurred herein, including reasonable attorney's fees; and

22           4. For such other and further relief as this Court deems proper in the  
23 premises.

**JURY TRIAL DEMAND**

Pursuant to FRCP Rule 38(b) and Local Rule 3-6(a), defendant hereby demands a jury trial.

Dated: July 2, 2008

LAW OFFICES OF KENNETH D. ROBIN

By /s/ Kenneth D. Robin  
Kenneth D. Robin  
Attorney for Kurt Albin Ernst, individually and  
dba Ernst Mechanical Company, a California  
Company

**CERTIFICATION OF INTERESTED PARTIES OR ENTITIES**

Pursuant to Local Rule 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report..

Dated: July 2, 2008

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By /s/ Kenneth D. Robin  
Kenneth D. Robin  
Attorney of Record for Kurt Albin Ernst,  
individually and dba Ernst Mechanical  
Company, a California Company